In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1502

LAWRENCE A. FRANK & VERONICA B. FRANK,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners were convicted, after a jury trial, of having willfully attempted to evade and defeat their income taxes for the years 1964, 1965 and 1966 by filing false and fraudulent tax returns, in violation of Section 7201 of the Internal Revenue Code of 1954.

During the prosecution years, petitioners operated a seed cleaning and processing mill on their farm. Mrs. Frank was primarily responsible for keeping the books, although both she and Mr. Frank worked on the books and in the mill. (Tr. 37, 81, 102-106, 133, 155-156.) Mr. Frank aided in preparing the summary sheets from

which Mr. Bell, their attorney, prepared their income tax returns. (Tr. 13, 79, 108.) There was testimony that petitioners had worked in close harmony for more than 40 years and would not conceal anything from each other. (Tr. 34.)

The government's case was based upon proof of specific items of omitted income in each year. During the prosecution years, petitioners omitted more than $55,000 of income from their records and their tax returns. (Govt. Ex. 46.) Their true income tax liability as compared with the amounts reported on the returns was as follows (Govt. Exhibits 43-44; Tr. 87-91):

Year	Corrected Tax	Reported Tax
1964	$ 2,020.85	$224.81
1965	2,008.08	– 0 –
1966	7,245.12	562.73
Totals	$11,274.05	$787.54

It was also proved that about $3,600 of income was omitted for the year 1963. (Tr. 86-87.)

Petitioners' sole contention, that the evidence was insufficient to support the verdict of guilty, is without substance. The fallacy of the argument lies in the assumption (Pet. 4) that *Spies* v. *United States,* 317 U.S. 492, 499-500, requires proof of willfulness independent of the filing of a false return. In *Spies,* however, this Court dealt with the very different situation in which no tax return was filed; the opinion in

that case makes no reference to the problem under consideration here.

In any event, there is here a showing of considerably more than the filing of a single false return. There was evidence, for example, of expenditures substantially in excess of reported income during the prosecution years, which, as this Court has held, was relevant to the issue of willfulness. *Smith* v. *United States,* 348 U.S. 147, 158-159. There was also proof of "a consistent pattern of underreporting large amounts of income, and of the failure on petitioners' part to include all of their income in their books and records", which is sufficient to support an inference of willfulness. *Holland* v. *United States,* 348 U.S. 121, 139. Thus, it was shown that Mr. Frank paid $14,318.84 during 1966 for a house for his son-in-law (Govt. Ex. 35; Tr. 49); that later that year Mr. Frank loaned a friend $3,075 (Govt. Ex. 37; Tr. 52); that he also made substantial loans to other acquaintances, ranging up to $3,000 (Govt. Exs. 36, 38, 39; Tr. 54); and that shortly before filing his 1966 income tax return, he purchased over $15,000 worth of stock (Tr. 130-131).

Mr. Frank is not absolved of criminal responsibility merely because Mrs. Frank was mainly responsible for keeping the records. The trier of fact was justified in inferring from the evidence outlined above that Mr. Frank knew the returns were false when he filed them and that his attempts to evade taxes were therefore willful.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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